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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,180	12/07/2001	Benjamin Wiegand	JBP-571	9457

27777 7590 09/25/2003
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EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/017,180

Applicant(s)

WIEGAND ET AL.

Examin r

Konata M. George

Art Unit

1616

-- Th MAILING DATE of this communicati n appears n the cover sheet with the correspondence address --

P r i d f r R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003 and 27 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,10-13 and 16-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-9,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 . 6) ☐ Other: _____

DETAILED ACTION

Claims 1-52 are pending in this application.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on June 11, 2002 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

Restriction Requirement

2. Applicant's election with traverse of Group I in Paper No. 5 is acknowledged. The traversal is on the ground(s) that it is not a serious burden to search all claims. This is not found persuasive because the inventions are independent and distinct. Applicant has not pointed out any errors in the restriction requirement nor shown that the inventions are not patentably distinct. Burden of search is not the sole reason for the restriction.

The requirement is still deemed proper and is therefore made FINAL.

Election of Species

3. Examiner acknowledges the election without traverse of an olfactory stimulus as the sensory regimen, benzoyl peroxide as the anti-acne agent and topical administration as the mode of administration. Claims 1-4, 7-9, 14 and 15 are the claims that read on the elected species. Claims 5 and 6 are drawn to non-elected anti-acne agents, claims

10, 11 and 13 are drawn to non-elected sensory regimen and claim 12 is drawn to a combination of topical administration of agent with an auditory stimuli.

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Continuity Data

4. Applicants failed to include the U.S. Patent Application Serial Number in the continuity data of the specification. Applicant is also advised to remove the attorney docket number in the continuity data.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 8, 9, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by FRIED (U.S. Pat. No. 5,753,637).

Fried teaches a method of treating acne conditions comprising an acne treatment medicine which is benzoyl peroxide (col. 2, lines 30-36). Column 2, line 56 – col. 3, line 11 teach that inert carriers can be added to the composition such as aloe vera gel to enhance the feel, look or aroma of the solution. It is the position of the examiner that since the prior art teaches the composition as claimed the limitation of the down regulation of the activity of the HPA axis would be satisfied. It is the position of the

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examiner that since the composition is being used to treat acne conditions that the resulting effect would be an improved quality of life for the user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over FRIED (U.S. Pat. No. 5,753,637) in view of STIEFEL et al. (U.S. Pat. No. 5,466,446).

Fried teaches a method of treating acne conditions comprising an acne treatment medicine which can be benzoyl peroxide (col. 2, lines 30-36). Column 2, line 56 – col. 3, line 11 teach that inert carriers can be added to the composition such as aloe vera gel to enhance the feel, look or aroma of the solution. The prior art does not teach the composition further comprising an antibacterial agent.

Stiefel teaches a topical composition used to treat skin disorders involving the sebaceous glands and follicles (i.e. acne) in humans (col. 1, lines 7-15). The composition is composed of an effective amount of benzoyl peroxide (anti-acne agent) and clindamycin (antibacterial agent) (col. 2, lines 29-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the combine teachings of Fried with Stiefel to disclose the

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claimed invention, because Stiefel teaches employing an antibacterial agent in an anti-acne composition. The expected result would be a composition that reduces the outbreak of acne lesions and the reduction of bacteria that causes acne.

Conclusion


7. Claims 1-4, 7-9, 14 and 15 stand rejected.

Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


Konata M. George
Patent Examiner
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